In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-68

STATE OF NEW JERSEY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A) is reported at 476 F. 2d 610. The opinion of the district court (Pet. App. B) is not officially reported.

JURISDICTION

The judgment of the court of appeals (Pet. App. C) was entered on March 13, 1973. On June 5, 1973, Mr Justice Stewart extended the time for filing a petition for a writ of certiorari to and including June 25, 1973 and the petition was filed June 25, 1973. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the court of appeals correctly applied state law in holding that monies not being employed in a gambling enterprise at the time of their seizure are not forfeitable.

STATUTE INVOLVED

New Jersey Stat. Ann. 2A:152-7 provides:

> Whenever any money, currency or cash shall be seized or captured by the police, constabulary or other officer in connection with any arrest for violation of or conspiracy to violate any gambling law of this state, the said money, currency or cash shall be deemed prima facie to be contraband of law as a gambling operation, or as part of a gambling operation, and it shall be unlawful to return the said money, currency or cash to the person or persons claiming to own the same, or to any other person, except in the circumstances and manner hereinafter provided.

STATEMENT

This action was initiated in the United States District Court for the District of New Jersey to determine the validity of competing claims to $265,000 in cash seized by state police officers in the course of a gambling raid.[1] The district court determined that at the time of seizure the cash had belonged to Joseph V. Moriarity, "a notorious gambler" (Pet. App. B. 8a) against all of whose property the United States had an outstanding lien for unpaid taxes under Section 6321 of the Internal Revenue Code of 1954, 26 U.S.C. 6321. However, the district court also determined that the cash, although not "used in

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[1]The claims of certain private individuals are no longer at issue. The question before the court of appeals was whether the cash now belongs to the State of New Jersey or the United States.

the daily operation and financing of [a] gambling business" (Pet. App. B 14a), had been "accumulated * * * as a result of illegal gambling operations" (*ibid.*), and that these operations had taken place prior to the perfection of the federal government's lien. The district court interpreted New Jersey law as requiring forfeiture to the State of all monies, seized in connection with a gambling raid, that either were being used in the operation of a gambling business or had previously been accumulated in such business, and as providing that forfeiture becomes effective from the time the monies are first used illegally. The court therefore awarded the cash to the State.

The court of appeals, following its own earlier decision in *Stapleton* v. *$2,438,110,* 454 F. 2d 1210, certiorari denied, 409 U.S. 894, held that New Jersey law requires forfeiture only of monies actually being used in the gambling enterprise at the time of seizure.[2] Since the monies here were no longer being so employed at the time of seizure, the court of appeals determined that they belonged to the United States under its lien and not to the State. The judgment of the district court was therefore reversed.

ARGUMENT

The narrow statutory issue before the court of appeals was whether accumulations of gambling profits, no longer used in the gambling enterprise, are subject to forfeiture under New Jersey Stat. Ann. 2A:152-7. That statute provides generally that money seized in connection with a gambling arrest "shall be deemed prima

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[2]*Stapleton* was decided after the decision of the district court below.

facie to be contraband of law as a gambling device, or as part of a gambling operation * * *."[3] In short, it is only monies used in gambling operations that are made subject to forfeiture but there is a statutory presumption that any monies seized in the course of a gambling raid were being used in the gambling operations.

Petitioner's argument, at bottom, is either that the statutory presumption is conclusive or that monies not being used in a gambling operation are nevertheless subject to forfeiture. But it is well established that the statutory presumption is not conclusive; it merely places the burden of proof on the party who claims that the monies were not being used illegally. See *Spagnuolo* v. *Bonnet,* 16 N.J. 546, 554-555, 109 A. 2d 623, 627-628. See, also, *State* v. *LaBella,* 88 N.J. Super. 330, 212 A. 2d 192. Moreover, it is also clear that money is subject to forfeiture only when it is "an integral part of the gambling operation." *Krug* v. *Board of Chosen Freeholders of Hudson County,* 3 N.J. Super. 22, 25, 65 A. 2d 542, 544. The court of appeals correctly applied these principles of New Jersey law.

Petitioner suggests (Pet. 7-10) that the decision below conflicts with *Farley* v. *$168,400.97,* 55 N.J. 31, 259 A. 2d 201, *Spagnuolo* v. *Bonnet, supra,* and *State* v. *Link,* 14 N.J. 446, 102 A. 2d 609. There is no conflict. In *Farley,* "[t]here [was] no dispute that the moneys were used in the gambling operation and were contraband on that account." 55 N.J. at 35, 259 A. 2d at 203. And in both *Spagnuolo* and *Link* there were explicit findings that the monies being forfeited were being used in gambling operations.

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[3]Forfeiture of such contraband is provided by New Jersey Stat. Ann. 2A: 152-8 to 152-10.

The decision below was correct, and the questions presented in the petition concerning the application of New Jersey law do not warrant further review by this Court.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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